

**Michael Reese**

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**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF WYOMING**

POWELL VALLEY HEALTH CARE INC,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	Civil Action 12-CV-0042-F
	)	
HEALTHTECH MANAGEMENT SERVICES, INC,	)	
	)	
Defendant/Crossclaimant,	)	
	)	
vs.	)	
	)	
PAUL CARDWELL and MICHAEL PLAKE,	)	
	)	
Defendants/Cross Defendants.	)	

**MOTION FOR EXTENSION OF TIME TO ANSWER AND OBJECT TO  
FIRST REQUESTS FOR ADMISSION SUBMITTED TO MICHAEL  
PLAKE AND MOTION TO STAY CIVIL PROCEEDINGS**

**COMES NOW** counsel for defendant Michael Plake (“Plake”) respectfully moves this  
Court for an order allowing an extension of time within which Plake is to submit answers and

objections to the Requests for Admissions submitted to him by Health Tech Managements Services, Inc. (“Health Tech”) and in support of this motion states and alleges as follows:

1. Health Tech electronically served the Request for Admissions on March 29, 2013.
2. Plake must submit answers by April 29, 2013 or the answers will be deemed admitted.
3. As this Court is aware, Plake is a defendant in a criminal case involving the same allegations embodied in this action.
4. Unlike co-defendant Cardwell who seems gone with the wind, Mr. Plake is now awaiting sentencing on May, 6, 2013.
5. The Constitution of the United States provides a great many rights and liberties to American citizens including the Fifth Amendment’s protection against self-incrimination. In the context of civil litigation, the Fifth Amendment is also applicable when a defendant’s answers might incriminate himself. For example under the Federal Rules of Evidence a statement of a party to a criminal proceeding in a civil proceeding is admissible against that party in the criminal proceeding. See Fed. R. Evid. 801.
6. Mr. Plake is scheduled to be sentenced on May 6, 2013 and up to that point anything he states in response to questions in a civil context may be admissible against him.
7. The failure to assert his Fifth Amendment right may be deemed to be a waiver.
8. Courts have long recognized the ability of courts to stay civil proceedings during the pendency of parallel criminal proceedings.

Even though discovery in a civil case is broad, the Fifth Amendment protects against compelled testimony and the admissions sought could be used in the pending criminal proceedings, particularly at sentencing at which time the court can sentence an individual based on that person's relevant conduct, or such admissions may be used for new charges. The civil and criminal cases overlap and it should be noted that federal mail fraud, wire fraud and bank fraud statutes have been construed so broadly as to cover virtually any case of misrepresentation for economic fraud and allowing continued discovery can expose Mr. Plake to self-incrimination. "It is clear that the privilege against self-incrimination ceases to apply once a witness has been convicted with respect to which he fears incrimination." *United States v. Pando*, 636 F.2d535, 543, (D.C. Cir. 1980).

Mr. Plake has yet to be convicted which will occur on May 6, 2013 at his sentencing. The plea agreement seems to resolve all possible charges against Mr. Plake arising from the same conduct, although conceptually there can always be additional charges. The plea agreement integrates similar charges from the Northern District of Indiana with the Wyoming charges into one sentencing. (Docket No. 12-CR-00081-01-F and 13-CR-00081-01-F.)

Although a conviction on one charge does not necessarily remove all potential criminal liability in all jurisdictions effort has been made to consolidate separately charged criminal conduct to assure judicial efficiency and economy of resolving similar charges in separate jurisdictions. Up to sentencing, though, Mr. Plake is at risk and the privilege of self-incrimination continues to provide Mr. Plake constitutional protection.

After sentencing the actual risk of criminal prosecution may be minimal, and very likely

there would be no risk of self-incrimination at that point, unless there is an appeal.

**WHEREFORE**, Mr. Plake respectfully asks this court to grant an extension of time until sentencing in order to answer and object to Health Tech's Request for Admissions.

**FURTHER**, Mr. Plake also respectfully asks this Court to stay all civil proceedings including filing of and response to motions, including motions of summary judgment.

DATED this 23<sup>rd</sup> day of April 2013.

DEFENDANT: Michael J. Plake

**By:** /s/ Michael Reese  
Michael Reese  
Attorney at Law  
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**CERTIFICATE OF SERVICE**

I hereby certify that on the 23<sup>rd</sup> day of April 2013, a true and correct copy of the foregoing was served furnished through (ECF) electronic service to the parties of record

/s/Michael Reese  
Michael Reese  
*Counsel for Defendant Plake*